

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

BSC Acquisition Sub LLC.

Employer ¹

Case No. 11-RC-6522

and

PACE INTERNATIONAL UNION, AFL-CIO
Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, BSC Acquisition Sub, LLC., operates a plant in Roanoke, Virginia, where it is engaged in the manufacture and non-retail sale of envelopes and related products. The plant is divided into three divisions which are titled, Double Envelope, Photocraft and Convertagraphics. There are approximately 93 employees employed in the Double Envelope division, 10 employees in the Photocraft division and 41 employees in the Convertagraphics division which totals about 144 employees working at the Roanoke location. The Petitioner, Pace International Union, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all production and maintenance employees employed in the Employer's Double Envelope division, but excluding all office clerical employees, all professional and technical employees, all guards and/or watchmen, and all supervisory employees as defined in the Act. A hearing officer of the Board held a hearing on March 21, 2003. During the hearing, the Petitioner amended its petition to reflect the fact that it further desires to represent all production employees employed in the

¹ The Employer's name appears as amended at hearing.

Photocraft division of the Employer. Both parties have filed briefs with me which have been carefully considered.

As evidenced at the hearing and in the briefs, the parties disagree on the scope of the appropriate unit. The Petitioner maintains that the production and maintenance employees in the Double Envelope and Photocraft divisions have sufficient community of interest apart from the employees in the Convertagraphics division to be an appropriate unit. The Employer contends that the proper unit would include all its production and maintenance employees in each of its three divisions at its Roanoke facility.

I have considered the evidence and the arguments presented by the parties on the issue of the scope of the unit. As discussed below, I have concluded that the proper unit for the employees of the Employer consists of all production and maintenance employees employed in all three of the divisions at the Roanoke location. Accordingly, I have directed an election in a unit consisting of approximately 144 employees. However, inasmuch as the unit found appropriate, herein is larger than that sought by the Petitioner, I shall allow the Petitioner 14 days in which to submit the additional showing of interest necessary.

I. Overview of Operations

In January 2001, through a bankruptcy auction, the Employer purchased its Roanoke facility. At that location, the Employer operates its Double Envelope, Photocraft and Convertagraphics divisions in the manufacture and non retail sale of envelopes and related products. All three divisions are physically located in a single building with each division having its own defined work area. In fact, there is a wall which separates the Convertagraphics and Double Envelope divisions. However, in some situations the three divisions share a

common work area. Employees of all three divisions use both the scitex machine, and go to the graphics/prepress area which is a single location in the Convertagraphics division.

The record shows that the Employer has established its three divisions because of its customer base. Each division produces products and provides services which are similar, yet distinct, for its own respective set of customers. Consequently, the Employer separately monitors each division by maintaining a profit and loss statement for each division. All three divisions are individually identified on a single sign on an exterior wall of the plant. The Double Envelope and Photocraft divisions share common supervision, but the Convertagraphics division has its own supervision. One person acts as the human resources director for all three divisions, and the same accounting and administrative personnel serve the entire plant. The Double Envelope and Photocraft share a president and plant manager while Convertagraphics has its own president and plant manager. Each of the three divisions has its own sales force. There is ultimately one set of managers for the Employer who are over all the employees and the operations of all three divisions. For state and federal tax purposes the Employer has a single identification number for all three divisions. The Employer attempts to maintain separate sales channels, separate machinery and production equipment, separate trade names and separate accounting for each of its divisions. Also the Employer desires that employees from one division not venture into the work area of another division unless the work requirements of the employee so dictate.

The parties agreed through stipulation at the hearing that the Convertagraphics and Double Envelope divisions have separate employee handbooks. Nevertheless, each handbook on its face reflects that it contains the benefit plan of BSC Acquisition Sub, LLC. The two employee benefit plans appear to be identical except that only the employees in the Convertagraphics division formerly had the opportunity to participate in a profit sharing program

of the Employer. The record indicates that since the beginning of this year the profit sharing benefit is no longer available to employees of the Convertagraphics division. All employees are paid by the Employer with a paycheck utilizing the same format.

While for the most part, the employees of the three divisions are segregated by the work area of their division, they do have the opportunity for daily contact with employees from the other divisions. This is because all three divisions have access to and utilize the same parking lot, restrooms, breakroom and smoking room. During their work, employees from the various divisions may also have reason to use common areas including the same mailroom, folding machine area, sales area, shipping and delivery areas, loading machine and conference room. Employees from all three divisions meet together when the Employer wishes to address a common topic such as employee benefits. The record shows that each division has its own independent pay scale whereby employees are paid based upon their experience and the degree of difficulty of their job. Though the amounts of employee compensation are different in each division, all the employees are paid on an hourly basis pursuant to rates which appear to be within the same range for similar work regardless of the division. One employee, who moved from Convertagraphics to Double Envelope stated that her starting hourly rate of pay in each division was identical.

APPROPRIATE SCOPE OF THE UNIT

Before examining the specific arguments of the Parties, I will briefly review the standards of the Board relied upon in determining the proper scope of a bargaining unit. The Act at Section 9(b) inter alia states:

- (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:...

In discussing the scope of a unit, the Board noted in *Syracuse University*, 204 NLRB 641, 645 (1973), “Thus, a plant wide unit may be presumed appropriate, not only because the employees share common, if not necessarily identical interest, but also because such larger units tend to maximize the economic strength of the employees as a counterweight to the superior economic strength of the employer.” The Board has consistently recognized the presumptive validity of a plant-wide unit in a single manufacturing setting. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962); *Beaumont Forging Company*, 110 NLRB 2200, 2201 (1954). Indeed, the Board’s position of favoring plant-wide production and maintenance units in situations where only one production facility is involved was discussed and acknowledged by the Petitioner during the hearing. To this extent, Counsel for Petitioner agreed that Petitioner has the burden of rebutting the presumption that a unit consisting of all three divisions of the Employer is not the appropriate unit.

The Petitioner argues in its brief that the divisions of Double Envelope and Photocraft are separate functional entities from the Convertagraphics division. The Petitioner maintains that the employees of the Double Envelope and Photocraft divisions share a sufficient community of interest apart from the employees of the Convertagraphics division to warrant a finding that the first two named divisions constitute an appropriate separate single unit. To support its position, the Petitioner asserts that the divisions of Double Envelope and Photocraft are autonomous from the division of Convertagraphics. While the record evidence reveals that all three divisions do function with a degree of independence due the distinct customers they serve and the products they individually manufacture, I find that their overall relationship to one another is more akin to different departments in a single manufacturing location. All three divisions are subject to the benefits and control of a one human resources person, one comptroller and ultimately a single company head. The three divisions are not autonomous, but rather they rely on the same

mutually shared facility and corporate structure. Additionally, the three divisions utilize common machinery such as the scitex machine and labelaire machine; and common work areas such as shipping, baling, prepress/graphics area and maintenance areas. Thus, simply by sharing the costs of common equipment and the common facilities located within the one plant the three divisions are truly interdependent.

The Petitioner further contends that there is insufficient employee interchange between the employees of Double Envelope and Photocraft and those of Convertagraphics to warrant a finding of a plant-wide unit. Again, I disagree with the Petitioner. Unquestionably, employees of each division primarily spend their time working in their respective areas of work. However, the record is clear that employees from the different divisions have the opportunity for, and do have, daily interchange with employees from other divisions. As noted, all employees share common restrooms, break area, smoking area and parking lot. Therefore, as in other manufacturing settings, it would be expected that employees from the Convertagraphics would regularly be able to have contact with the employees working in the other two divisions. This opportunity for employee interchange is only heightened by the fact that the three divisions share the exact same three-shift work schedule. While actually working, the employees of Convertagraphics also have contact with employees of the other two divisions whenever they may be working in the previously-described common work areas or operating common machinery utilized by all divisions. All employees of the Employer are from time to time brought together in joint meetings concerning issues similarly affecting all three divisions.

The machines required for each division appear to be somewhat unique for each division in that they are specifically designed for production of a special product. Consequently, there is no evidence of cross training of employees between divisions; and the supervisory compliment for each division is not used outside of the respective division. However, during the time the

Employer has operated the plant it has maintained a policy of allowing laid off employees from one division to seek work in another division. One employee laid off from the Convertagraphics division was, in the last 12 months prior to the hearing, subsequently employed in the Double Envelope division as a baling employee. Under the policy of the Employer, this employee maintained his seniority when he moved from one division to another.

The employees of the Double Envelope and Photocraft divisions further share a strong community of interest with the employees of the Convertagraphics division due to the pay and fringe benefits they all receive. As previously described, all employees in the three divisions receive the same benefits. The employees within each division are paid at different hourly rates as are employees from division to division. There is nothing in the record to indicate that all of the employees of the Employer are not compensated on an hourly basis pursuant to a rate scale which is similar in nature for each division.

In finding that the appropriate unit herein is comprised of all employees of the three divisions of the Employer, I am not unmindful of the manner in which the Employer operates each of the three divisions. However by conducting each division as its own profit and loss center for internal economic reasons, the Employer has not destroyed the overall community of interests which exists between the Convertagraphics division and the other two divisions. Moreover, in addressing the position of the Petitioner on this point, I recognize that the Petitioner now agrees that the two divisions of Double Envelope and Photocraft are appropriate for a single unit even though, like Convertagraphics, the Employer maintains separate accounting records for each of those two divisions. The other arguments which the Petitioner has put forth simply do not overcome the acknowledged and well fixed presumption that a plant-wide unit is the appropriate unit for an employer with a single manufacturing location. Accordingly, I find that a unit consisting of all the production and maintenance employees in the Double Envelope,

Photocraft and Convertagraphics divisions of the Employer is an appropriate unit. *Syracuse University, supra*; *Kelly Business Furniture, Inc.*, 288 NLRB 474.

II. CONCLUSION AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employee of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time production and maintenance employees employed in the Double Envelope Photocraft and Convertagraphics divisions of the Employer's Roanoke, Virginia, plant; but excluding all office clerical employees, all professional and technical employees, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

As previously stated, the Petitioner shall be allowed 14 days in which to submit the additional showing of interest necessary for the larger unit found appropriate. If the Petitioner subsequently and timely submits the necessary showing of interest, the National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by PACE International Union, AFL-CIO. The date time, and place of the

election will be specified in the notice of election that the Board's Regional Office will, if later determined to be needed, issue, subsequent to the Decision.

A. Voting Eligibility

Eligibility to vote in the possible election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employee who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 12367 (1966); NLRB v. Wyman-Gordon Company, 395 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full

names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, North Carolina, 27116-1467, on or before **April 11, 2003**. No extension of time to file this list shall be granted nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (336) 631-5210. Since the list is to be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Regional Office.

3. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 18, 2003**.

Dated at Winston-Salem, North Carolina, on the 4th day of April 2003.

/s/ Patricia L. Timmins

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